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APPELLANT PRO SE:

CARL JONES
Gary, Indiana

ATTORNEY FOR APPELLEE:

GORDON A. ETZLER
Gordon A. Etzler & Associates
Valparaiso, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CARL JONES,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 45A03-0604-CV-173
)	
KIMBERLY COLLINS,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE LAKE CIRCUIT COURT
The Honorable Lorenzo Arredondo, Judge
Cause No. 45C01-0511-PO-557 and Cause No. 45C01-0511-PO-575

January 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Petitioner Carl Jones (“Jones”) appeals the trial court’s denial of his Motion to Correct Errors, which sought relief from the trial court’s order vacating Jones’ protective order against Appellee-Respondent Kimberly Collins (“Collins”), reaffirming Collins’ protective order against Jones, and sanctioning Jones. We affirm in part and reverse in part.

Issues

Jones raises two issues on appeal, which we restate as:

- I. Whether the trial court erred in reaffirming Collins’ protective order; and
- II. Whether the trial court abused its discretion by imposing sanctions against Jones.

Facts and Procedural History

Jones and Collins, who at that time worked at the same prosecutor’s office, dated briefly in 2004. Shortly thereafter, Rosalyn, a co-worker and friend of Collins, began dating Jones. In December of 2004, Collins spoke with Jones regarding his relationship with Rosalyn.

On November 2, 2005, Collins telephoned Jones to ask some legal questions, and Jones requested that he call her back, ending the conversation. Jones returned the call and left a message. The next day Jones filed a petition for and was granted a temporary ex parte protective order to prohibit Collins from calling him at home.

On November 5, Jones and Rosalyn went to Carson Pirie Scott at Southlake Mall, where Collins worked part time. A confrontation, the facts of which are disputed, occurred among Jones, Rosalyn, and Collins. Subsequently, Collins filed a police report and an ex

parte petition for a temporary protective order against Jones that was granted.

The hearings on the two protective orders were consolidated, and a single hearing was held where Jones called eight witnesses and Collins called three. On January 9, 2006, the trial court ordered Jones' protective order vacated, Collins' protective order against Jones reaffirmed, and sanctions against Jones in the form of paying Collins' attorney's fees as well as the attorneys' fees of the parties waiting to be heard by the court. Thereafter, Jones filed a Motion to Correct Errors. The trial court denied the motion. Jones now appeals.

Discussion

I. Reaffirmation of Collins' Protective Order

The argument section of an appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on." Ind. Appellate Rule 46(A)(8)(a). We will not consider an appellant's assertions when he or she fails to present cogent arguments supported by authority and references to the record as required by the appellate rules. Shepard v. Truex, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). "If we were to address such arguments, we would be forced to abdicate our role as an impartial tribunal and would instead become an advocate for one of the parties." Id. We clearly cannot do this. Id.

In his sole paragraph supporting his argument that there was insufficient evidence to support Collins' protective order, Jones does not provide a standard of review, cite to any case law, or cite to the record. Moreover, part of his argument is devoted to why Jones' protective order should have been sustained. To address this issue, we would have to

abdicate our role as an impartial tribunal and become an advocate for Jones, something we cannot do. Jones' failure to provide us with cogent argument waives this issue on appeal.

II. Sanctions

Jones contends that the trial court abused its discretion in imposing sanctions against him. The trial court ordered Jones to pay Collins' attorney's fees as well as the attorneys' fees of the parties in an unrelated case who were waiting to be heard at the conclusion of Jones' case. We first address the order to pay Collins' attorney fees. Indiana Code Section 34-52-1-1(b) provides in part:

In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:

. . . .

(2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless;

We review the trial court's decision to award attorney's fees under an abuse of discretion standard. Bacompt Systems, Inc. v. Ashworth, 752 N.E.2d 140, 146 (Ind. Ct. App. 2001), trans. denied.

This court has established guidelines for determining when a claim is frivolous, unreasonable or groundless for purposes of this statute. Specifically, we have held that a claim or defense is frivolous, unreasonable or groundless if it is used primarily for the purpose of harassment, if the attorney is unable to make a good faith and rational argument on the merits of the action, or if the lawyer is unable to support the action taken by a good faith and rational argument for an extension, modification, or reversal of existing law. Garage Doors of Indianapolis, Inc. v. Morton, 682 N.E.2d 1296, 1303 (Ind. Ct. App. 1997), trans. denied. In its review, this court looks to the totality of the circumstances, and if we

find that no reasonable attorney would consider the claim worthy of litigation, the claim is frivolous, unreasonable or groundless. Id.

Apparently, the basis of Jones' petition for a protective order, to the best of our ability to gather from the record due to the petition not being included in his appendix, is that Collins supposedly harassed Jones by calling his home repeatedly in a span of twelve months and drove by Jones' house. Jones did not produce any phone records substantiating his claim of repeated harassing phone calls. Jones also admitted in his testimony that Collins lives only four blocks away from Jones, and when Collins drives past his house, it is without incident. Furthermore, Jones testified that the last telephone call made by Collins was cordial and professional. Instead of producing evidence supporting his claim, Jones brought before the court eight witnesses, only one of whom testified to the alleged "drive-bys" and harassing phone calls. Moreover, the trial court did not find Jones' witness, his fiancée Rosalyn, to be credible. Under these circumstances, we cannot say the trial court erred in determining that Jones' petition was frivolous, unreasonable, and groundless. Thus, the trial court did not abuse its discretion in awarding attorney's fees to Collins.

The trial court also ordered Jones to pay the attorneys' fees of litigants of a different case. In support of this order, the trial court found:

7. Mr. Jones used this court, presenting a string of witnesses in an aimless, unfocused process, making the afternoon much more than an hour long soap opera. As this cause took the full afternoon of the court's session, lacking sufficient basis for the pursuit of the claim of Carl Jones and despite caution to Carl Jones during the proceeding about the seeming lack of basis for expending the court's time, the previously scheduled matter of Alicia Sim v. Kenneth Sim, III, Cause No. 45C01-0511-PO-0069, was not able to be heard, despite the presence, and waiting, of both of the parties and their respective attorneys, and therefore those litigants were deprived of the value of their time

and their attorneys' time, so that an appropriate sanction as to Carl Jones' frivolous proceedings should include that Mr. Jones pay the costs, so that the Sims parties do not, of those legal fees for the needless waiting.

Appellant's Appendix at 5.¹

Indiana Code Section 34-52-1-1(b) only authorizes an award of attorney's fees to the prevailing party. Thus, the trial court did not have the authority under the statute to order Jones to pay the attorneys' fees of parties in a separate case.² We therefore hold that the trial court abused its discretion in ordering Jones to pay the attorneys' fees of the extraneous parties.

Conclusion

Jones waived his insufficient evidence argument by failing to provide a cogent argument. The trial court did not abuse its discretion in ordering Jones to pay Collins' attorney fees. However, the trial court did abuse its discretion in ordering Jones to pay the attorneys' fees of extraneous parties.

Affirmed in part and reversed in part.

BARNES, J., concurs.

VAIDIK, J., concurs in part and concurs in result in part with opinion.

¹ Jones did not consecutively number the pages in his appendix as required by Ind. Appellate Rule 51(C). Due to the brevity of his appendix, partly due to the absence of the chronological case summary as required by App. R. 50(A)(2)(a), we have numbered the pages consecutively and cite to those numbers.

² Neither the trial court's statement of its holding nor order couch the sanctions in terms of contempt, so we need not address whether the sanctions would be upheld under a conviction of contempt.

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VAIDIK, Judge, concurring in result as to Part II.

I agree with the majority's determination that Jones waived any argument regarding the sufficiency of the evidence supporting Collins' protective order and with its decision to uphold the trial court's order awarding attorney's fees to Collins. However, I do not believe we need to reach the issue of frivolousness under Indiana Code § 34-52-1-1(b) in order to uphold the award of attorney's fees.

Indiana Code § 34-26-5-9(c) grants a trial judge the authority to award attorney's fees in any protective order case. The statute provides:

A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:

* * * * *

- (3) Order a respondent to:
 - (A) pay attorney's fees. . . .

Because the protective order statute itself provides for an award of attorney's fees, I do not believe it is necessary that we look outside the statute and uphold the trial court's order based

on the civil suit frivolousness statute. First, the trial court did not base its order on the frivolousness statute, and second, it is within a trial judge's discretion to order the respondent to pay attorney's fees under the protective order statute.

The majority opinion assumes that the frivolousness statute applies to protective order proceedings. That may very well be the case, but Indiana law has not yet addressed this question. Before we determine the interplay between the authorization of attorney's fees under the protective order statute and the authorization of attorney's fees under the frivolousness statute, this issue should be fully briefed by the parties before us. Here, neither party even mentioned the frivolousness statute in their briefs. We are ill-equipped, then, to render an opinion applying the frivolousness statute in a situation where the protective order statute itself provides an equivalent remedy.

Furthermore, I fear that application of the frivolousness statute, which allows a trial court to award fees to *either* party, may chill the filing of meritorious protective order cases because potential claimants may be deterred from filing where they face the possibility of being ordered to pay fees. Were we to base our decision on the protective order statute instead, we would avoid this result because that statute limits the trial court's discretion to an order against the respondent.

I do not find an abuse of discretion in the case before us, and therefore, I concur in result as to Part II of the majority opinion.